

## Decision of the European Ombudsman on complaint 315/2003/MF against the European Commission

Decision

**Case 315/2003/MF - Opened on 13/03/2003 - Decision on 03/11/2003**

Strasbourg, 3 November 2003

Dear Mr K.,

On 11 February 2003, you made a complaint to the European Ombudsman against the European Commission concerning the decision of the European School of Varese not to extend your secondment.

On 13 March 2003, my predecessor forwarded the complaint to the President of the European Commission for its opinion. On 13, 18 (1) and 24 March 2003, you sent my predecessor further documents which were forwarded to the European Commission. The European Commission sent its opinion on 16 June 2003. I forwarded it to you with an invitation to make observations, which you sent on 1 July 2003.

I am writing now to let you know the results of the inquiries that have been made.

### THE COMPLAINT

*The original complaint*

According to the complainant, the relevant facts are as follows:

The complainant is a seconded teacher of Belgian nationality at the European School of Varese, in Italy.

In their report dated 20 December 2002 and 8 January 2003 respectively, both the Headmaster of the European School and the School Inspector proposed that the complainant's secondment should be terminated. On 28 January 2003, it was decided not to extend the complainant's secondment at the European School.

On 21 January 2003, the complainant appealed against the report of the School Inspector. On 5 February 2003, the complainant lodged an appeal with the Board of Inspectors of the European School. The complainant was subsequently informed that his two appeals had been rejected because they had failed to fulfil the conditions set out in the regulations for Members of the



Seconded Staff of the European Schools.

On 11 February 2003, the complainant lodged a complaint with the European Ombudsman against the European Commission concerning the decision not to extend his secondment. The European Ombudsman considered that the core of the complainant's case was the allegation that the European School had failed to inform him about the conditions to appeal against the decision not to extend his secondment. The European Ombudsman therefore decided to forward the complaint to the European Commission and to ask it for its opinion on this allegation.

*The letter of the complainant dated 18 March 2003*

On 18 March 2003, the complainant sent a further letter to the European Ombudsman. He alleged that there had been procedural irregularities in the drafting of his report and an infringement of the regulations for Members of the Seconded Staff of the European Schools. The complainant further alleged that he had been victim of moral harassment by the Headmaster of the European School and the School Inspector.

## THE INQUIRY

### **The European Commission's opinion**

The opinion of the European Commission on the complaint was in summary as follows:

Pursuant to the regulations for Members of the Seconded Staff of the European Schools, teachers have to serve a probationary period which ends after the second school year following their appointment. At the end of the probationary period, and if the teachers are confirmed in their posts, the secondment is extended for a three-year period, renewable once for four years.

The complainant was seconded by the Belgian relevant authorities to the European School of Varese from 1 September 1998. At the end of the two probationary years, the Headmaster of the European School and the School Inspector proposed the extension of the complainant's secondment for three years. On 9 February 2000, the Representative of the Board of Governors of the European School decided to extend the complainant's secondment.

At the end of the three-year period, the Headmaster of the European School and the Inspector, in their report dated 20 December 2002 and 8 January 2003 respectively, proposed that the complainant's secondment should be terminated. As a result, it was decided that the complainant's secondment should be terminated on 28 January 2003.

Pursuant to Articles 79 and 80 of the regulations for Members of the Seconded Staff of the European Schools, the complainant has the possibility to lodge an administrative appeal with the Representative of the Board of Governors or the Boards of Inspectors, depending on the case. The complainant can further lodge a contentious appeal with the Board of Appeal which has sole jurisdiction in the first and final instance in any dispute between the management organs of the School and members of staff.

The dispute between the complainant and the European School of Varese exclusively



concerned the internal management of the European Schools.

### **The complainant's observations**

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In his reply of 1 July 2003, the complainant maintained his complaint. He stated that his complaint did not exclusively concern the internal management of the European School.

## **THE DECISION**

### **1 The scope of the Ombudsman's inquiry**

1.1 The European Schools were originally created by the European Communities and the Member States of the European Communities, which signed the Statute of the European School in 1957. The Ombudsman has consistently taken the view that the European Schools are not a Community institution or body.

1.2 However, the Ombudsman also takes the view that the Commission has a certain responsibility for the operation of the European Schools because it is represented in the Board of Governors and contributes largely to their financing. The Ombudsman considers that the Commission's responsibility does not extend to questions concerning the internal management of the Schools.

1.3 On this basis, the Ombudsman asked the Commission for an opinion on the allegation made by the complainant in his original complaint dated 11 February 2003.

1.4 The complainant sent a further letter on 18 March 2003 in which he alleged that there had been procedural irregularities in the drafting of his report and an infringement of the regulations for Members of the Seconded Staff of the European Schools. The complainant further alleged that he had been victim of moral harassment by the Headmaster of the European School and the School Inspector.

1.5 Pursuant to Article 195 of the Treaty establishing the European Community, *"the European Ombudsman shall conduct inquiries for which he finds grounds"*. The European Ombudsman considered that the complainant had not supplied enough supporting evidence concerning his further allegations. Therefore, the European Ombudsman did not consider it appropriate to extend his inquiry so as to cover these further allegations.

### **2 The alleged failure of the European School to inform the complainant about the conditions to appeal against the decision not to extend his secondment**

2.1 The complainant alleged that the European School had failed to inform him about the conditions to appeal against the decision not to extend his secondment.

2.2 In its opinion on the complaint, the European Commission explained that, pursuant to Articles 79 and 80 of the regulations for Members of the Seconded Staff of the European Schools, the complainant can lodge an administrative appeal with the Representative of the Board of Governors or the Boards of Inspectors, depending on the case. The complainant can further lodge a contentious appeal with the Board of Appeal which has sole jurisdiction in the



first and final instance in any dispute between the management organs of the School and members of staff.

2.3 The present allegation was brought to the Commission's attention when the European Ombudsman forwarded the complaint to the President of the European Commission for its opinion. The Ombudsman notes that, in its opinion, the Commission has provided the complainant with detailed information on the appeal possibilities to challenge the decision of the European School not to extend his secondment. Furthermore, the Ombudsman notes that this information is based on the regulations for Members of the Seconded Staff of the European Schools. Besides, the complainant himself refers to Article 79 of the regulations for Members of the Seconded Staff of the European Schools in his appeal to the Board of Inspectors of 5 February 2003.

2.4 From the above, the European Ombudsman concludes that there appears to have been no maladministration by the European Commission in this case.

### **3 Conclusion**

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman therefore closes the case.

The President of the European Commission will also be informed of this decision.

## **FURTHER REMARK**

The European Ombudsman considers that it is good administrative practice that a decision which adversely affects a member of staff should indicate the appeal possibilities in order to challenge the decision. (2)

The European Ombudsman notes that, from the information contained in the file, the decision not to extend the complainant's secondment did not appear to contain any indication as to the possibilities for the complainant to lodge an appeal.

The European Ombudsman considers that it would be useful if the members of staff could be informed of the appeal possibilities to challenge a decision in such cases.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Two documents were sent by the complainant on 18 March 2003.

(2) Article 19.1 of the European Code of Good Administrative Behaviour: *"A decision of the Institution which may adversely affect the rights or interests of a private person shall contain an*



*indication of the appeal possibilities available for challenging the decision. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, as well as the time-limits for exercising them" .*